

**BEFORE THE  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

**In the Matter of:**

**SCAFFOLDING TODAY, INC.,**

**Respondent.**

**Docket No. FMCSA-2007-28025<sup>1</sup>  
(Eastern Service Center)**

**ORDER DENYING PETITION FOR RECONSIDERATION**

**1. *Background***

On February 28, 2007, the Field Administrator for the Eastern Service Center, Federal Motor Carrier Safety Administration (FMCSA) (Claimant) issued a Notice of Claim (NOC) to Scaffolding Today, Inc. (Respondent). The NOC charged Respondent with one violation of 49 CFR 385.325(c)/385.337(b), operating a commercial motor vehicle in interstate commerce on or after the effective date of an out-of-service order, and proposed a civil penalty of \$7,000 for the alleged violation.

In its March 19, 2007 reply to the NOC, Respondent requested a formal hearing “to present my claim against Federal Motor Carrier for failure to notify me and porperly (sic) explain the remification (sic) of failure to respond.” This reply was submitted by Respondent’s Sales Manager, Frank Piluso, the addressee on the NOC.

Claimant objected to Respondent’s request for hearing and moved for entry of an order of default declaring the NOC (including the civil penalty) as the final order in the proceeding, arguing that Respondent’s reply was so deficient as to constitute no reply at all. Finding

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<sup>1</sup> The prior case number was PA-2007-0096-US0659.

Respondent in default, I granted Claimant's motion and issued a Final Order on May 25, 2010, directing Respondent to pay the \$7,000 penalty.

On June 9, 2010, Respondent served a Petition for Reconsideration of the Final Order. This petition was submitted by Surinder Singh, Respondent's President. Mr. Singh claimed that he did not learn about this enforcement action until receiving a copy of the May 25, 2010 Final Order. Mr. Singh alleged that Frank Piluso, whose employment with Respondent ended in June 2007, failed to inform any other officer of Respondent that the company had received the February 28, 2007 NOC. Mr. Singh requested that Respondent be provided with all documents relating to the NOC and this proceeding so that the company could determine how to reply to the NOC.

On June 23, 2010, Claimant served a Response and Opposition to the Petition for Reconsideration (Claimant's Response). Claimant argued that motor carriers are responsible for the actions of their employees within the context of the Agency's Rules of Practice, as well as within the context of regulatory compliance. Consequently, Claimant contended, Respondent is not entitled to a second chance to reply to the NOC and the Petition for Reconsideration should be denied.

## ***2. Decision***

Respondent provided no evidence demonstrating that Mr. Piluso was not authorized to act on behalf of the company in responding to the NOC. On the other hand, the evidence provided by Claimant in response to the Petition for Reconsideration demonstrates that Mr. Piluso was the company official responsible for handling safety compliance issues. Mr. Piluso signed Motor Carrier Identification Reports (Form MCS-150) filed with FMCSA on behalf of Respondent in March 2006 and March 2007,

certifying his familiarity with the Federal Motor Carrier Safety Regulations and the accuracy of the MCS-150 forms.<sup>2</sup>

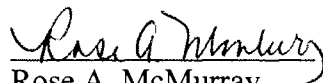
As the Agency stated in a slightly different context:

“The attempts by Universal Mattress to separate the problems of its management staff from the obligations of the company to submit a timely reply are unavailing. Were we to rule in favor of the Petitioner, how easy it would be for every motor carrier to blame an employee for the company’s failure to comply with requirements of the regulations under which both the Agency and industry operate, and thereby escape responsibility....

Just as motor carriers are responsible for the actions of their employees within the context of the FMCSRS, so too are they responsible for the action or inaction of their employees within the context of the Rules of Practice. If, as Petitioner argued, it had relied upon its former manager to receive important correspondence, including matters involving FMCSA, then it was incumbent upon Petitioner to ensure that its reliance was well placed. It did not, and the Petition submitted by Universal Mattress, even if timely served and accompanied by an affidavit, would not have caused us to overturn the Field Administrator’s finding of default.”<sup>3</sup>

Notwithstanding Mr. Piluso’s alleged failure to notify Mr. Singh of the NOC, Mr. Piluso was delegated the responsibility of handling Respondent’s safety compliance and Respondent was bound by his actions on behalf of the company. Respondent is not entitled to another bite of the apple. Therefore, the Petition for Reconsideration is denied.

*It Is So Ordered.*

  
Rose A. McMurray  
Assistant Administrator  
Federal Motor Carrier Safety Administration

7.30.10  
Date

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<sup>2</sup> See Exhibits D and E to Claimant’s Response.

<sup>3</sup> *In the Matter of Universal Mattress, Inc.*, Docket No. FMCSA-2003-16176, Order Denying Petition for Reconsideration, November 20, 2003, at 3-4.

**CERTIFICATE OF SERVICE**

This is to certify that on this 30 day of July, 2010, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

Surinder Singh, President  
Scaffolding Today, Inc.  
4130 H Street  
Philadelphia, PA 19124

One Copy  
U.S. Mail

John C. Bell, Esq.  
Trial Attorney  
Office of Chief Counsel (MC-CCE)  
Federal Motor Carrier Safety Administration  
802 Cromwell Park Drive, Suite N  
Glen Burnie, MD 21061

One Copy  
U.S. Mail

Loretta Bitner, Acting Field Administrator  
Federal Motor Carrier Safety Administration  
802 Cromwell Park Drive, Suite N  
Glen Burnie, MD 21061

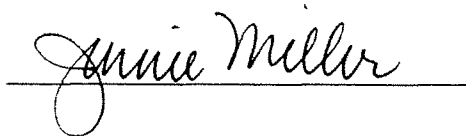
One Copy  
U.S. Mail

Timothy A. Cotter  
Pennsylvania Division Administrator  
Federal Motor Carrier Safety Administration  
228 Walnut Street, Room 560  
Harrisburg, PA 17101

One Copy  
U.S. Mail

Docket Operations  
U.S. Department of Transportation  
1200 New Jersey Avenue SE  
Room W12-140  
Washington, DC 20590

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